DZH

267 NLRB No. 9

D--9981
Wichita Falls, TX

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WICHITA FALLS FOUNDRY, A
DIVISION OF 4--R FOUNDRIES,
INC.

and

Case 16--CA--10178

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 23 November 1981 by the International Association of Machinists and Aerospace Workers, AFL--CIO, herein the Charging Party, and duly served on Wichita Falls Foundry, a Division of 4--R Foundries, Inc., herein Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint and notice of hearing on 12 November 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

With respect to the unfair labor practices, the complaint alleges in substance that, commencing on or about 13 November 1981, Respondent, a successor employer, has refused and continues

to fail and refuse to bargain collectively with the Charging Party by unilaterally altering employees' existing working conditions and benefits, including vacation, holiday, overtime, and pension and insurance plans, as well as Christmas bonuses, seniority rights, and wages.

The Respondent filed no answer to the complaint.

On 24 January 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 1 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to

be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless Respondent filed an answer to the complaint within 10 days of the complaint's service ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, according to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel sent a letter to Respondent's counsel, Thomas W. Moore, dated 22 December 1982 explaining the implications of Respondent's failure to file an answer and giving Respondent a further deadline of 30 December 1982 to file said answer. Nonetheless, Respondent has not filed any answer to the complaint.

On 24 January 1983 counsel for the General Counsel filed with the Board in Washington, D.C., a Motion for Summary Judgment. On 1 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause by 15 February 1983 why the Board should not grant counsel for the General Counsel's Motion for Summary Judgment. Respondent did not reply to the Notice To Show Cause.

Accordingly, under the rule set forth above, Respondent having shown no good cause for its failure to file an answer, we deem the allegations of the complaint to be admitted and we find them to be true and we grant the Motion for Summary Judgment.[1]

---

[1] In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's (continued)

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, Wichita Falls Foundry, a Division of 4--R Foundries, Inc., is a Texas corporation, with a principal place of business in Wichita Falls, Texas. At all times material to this proceeding, Respondent has been engaged in the manufacture of metal castings. Based upon the projection of its operation since on or about 13 November 1981 at which time Respondent commenced its operations, Respondent, in the course and conduct of its business operations will annually sell and ship from its facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Texas.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. The Labor Organization Involved

The Charging Party, International Association of Machinists and Aerospace Workers, AFL--CIO, is, and has been at all times material to this proceeding, a labor organization within the meaning of Section 2(5) of the Act.

---

[1] complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

III. The Unfair Labor Practices

On or about 13 November 1981 Respondent purchased the Wichita Falls, Texas, metal casting foundry of Dana Corporation, including the equipment, supplies, and materials. Since that date, with no hiatus in operation, Respondent has been engaged in the same business operations, at the same location, selling the same product to substantially the same customers, and has a majority of its employees who were previously employees of Dana Corporation. By virtue of the above, Respondent has continued the employing entity and is a successor of Dana Corporation.

Since some time prior to 13 November 1981 the Charging Party has been designated the exclusive collective-bargaining representative for the following employees of Respondent:

> All maintenance and production employees employed by Respondent at its plant located at 307 Barwise, Wichita Falls, Texas, and excluding all other employees including office clerical employees, office janitors, technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

For a number of years, the Charging Party and Respondent's predecessor, Dana Corporation, have executed collective-bargaining agreements dealing with wages, hours, and conditions of employment covering the employees in the above-described unit, the most recent of which having effective dates of 16 August 1980 through 14 August 1983. Respondent, in the sales purchase agreement between itself and its predecessor, agreed to maintain the same terms and conditions for bargaining unit employees as had been in effect under its predecessor, Dana Corporation. Furthermore, on or about 24 November 1981, Respondent agreed by

letter to recognize the Charging Party as the representative of employees in the above unit. Since on or about 13 November 1981 Respondent has refused, and continues to refuse, to bargain collectively with the Charging Party. Respondent unilaterally, without notice to or bargaining to impasse with the Charging Party, has changed existing terms and conditions of employment of unit employees by altering employees' existing working conditions and benefits, including vacation, holiday, overtime, and pension and insurance plans, as well as Christmas bonuses, seniority rights, and wages. Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and make whole its employees for any wages and benefits, including vacation, holiday, overtime, and pension and

insurance plans,[2] as well as Christmas bonuses, seniority rights, and wages which may have been lost by virtue of any unilateral changes in terms and conditions of employment made by Respondent.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Respondent Wichita Falls Foundry, a Division of 4--R Foundries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Charging Party, International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All maintenance and production employees employed by Wichita Falls Foundry, a Division of 4--R Foundries, Inc., at its plant located at 307 Barwise, Wichita Falls, Texas, and excluding all other employees including office clerical employees, office janitors,

---

[2] Because the provisions of employee benefit funds are variable and complex, the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent Wichita Falls Foundry, a Division of 4--R Foundries, Inc., must pay any additional amounts into the benefit funds in order to satisfy our ''make whole'' remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of the funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213, 1216, fn. 7 (1979).

technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

4. At all times material to this proceeding, the Charging Party has been the exclusive bargaining representative of the employees in the aforesaid unit within the meaning of Section 9(a) of the Act.

5. By unilaterally altering existing working conditions and benefits, including vacation, holiday, overtime, and pension and insurance plans, as well as Christmas bonuses, seniority rights, and wages, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wichita Falls Foundry, a Division of 4--R Foundries, Inc., Wichita Falls, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally altering employees' existing working conditions and benefits, including vacation, holiday, overtime, and pension and insurance plans, as well as Christmas bonuses, seniority rights, and wages.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Recognize and bargain collectively with the Union as the exclusive bargaining representative for all maintenance and production employees employed at its plant located at 307 Barwise, Wichita Falls, Texas, and excluding all other employees including office clerical employees, office janitors, technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

(b) Make whole its employees for any wages and benefits which may have been lost by virtue of any unilateral changes in terms and conditions of employment made by Respondent.

(c) Post at its facility in Wichita Falls, Texas, copies of the attached notice marked ''Appendix.''[3] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places,

---

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. 10 August 1983

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT unilaterally alter employees' existing working conditions and benefits, including vacation, holiday, overtime, and pension and insurance plans, as well as Christmas bonuses, seniority rights, and wages.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL recognize and bargain with the Union as the exclusive bargaining representative for all maintenance and production employees employed at our plant located at 307 Barwise, Wichita Falls, Texas, and excluding all other employees including office clerical employees, office janitors, technical employees, drafters, drafting room employees, accounting employees, outside service employees, guards, watchmen and supervisors as defined in the Act.

WE WILL reimburse, with interest, our employees for any losses they may have incurred as a result of any unilateral changes in the terms and conditions of employment which we have made.

WICHITA FALLS FOUNDRY, A
DIVISION OF 4--R FOUNDRIES, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817--334--2941.